



**PLANNING BOARD MINUTES
SPECIAL MEETING
TOWN OF FOSTER**

**Benjamin Eddy Building, 6 South Killingly Road, Foster, RI
Wednesday: March 10, 2010 7:00 p.m.**

A. Call to Order

The meeting was called to order by Pat Moreau, Chair at 7:04 p.m.

B. Roll Call

Present from the Planning Board were Pat Moreau, Chair; John Neale, Vice Chair; Helen Hardy, Secretary, members Tom Mercier, Mike Carpenter, Julia Parmentier and Marcia Bowden. Also present was Ann-Marie Ignasher, Town Planner, John Bevilacqua, Town Solicitor, Alesha Cerrito, Scott Spear, Rich Blodgett, Brian Thalmann, and Robert Silva.

C. Approval of Minutes

Planning Board Meeting January 20, 2010 – tabled to April 7, 2010
Rte 6 Rezoning Workshop January 23, 2010 – tabled to April 7, 2010
Planning Board Meeting February 3, 2010 – tabled to April 7, 2010
Rte 6 Rezoning February 5, 2010 – tabled to April 7, 2010
Planning Board Meeting February 17, 2010 – tabled to April 7, 2010
Rte 6 Rezoning workshop February 20, 2010 – tabled to April 7, 2010
Planning Board Meeting March 3, 2010

Tom Mercier moved to table the minutes of March 3, 2010 to April 7, 2010. Julia Parmentier seconded. Motion carried unanimously.

D. Correspondence and Review

None

E. Board Members' Reports

None

F. Planner's Report

None

G. Zoning – Opinion Requested

None

H. Commercial Site Reviews

None

I. Administrative Subdivisions

None

J. Minor Subdivisions

None

K. Major Subdivisions/Land Development

Gene Allen Road/ Costa, David /Lisa
Applicant – Blue Dog Investments, LLC
AP 18 - Lot 0025
Existing Lot size 130.8 +/- acres
Proposed number of lots – nine (9)
Proposed Lot 1 - 27.84 acres +/- Gloucester
Proposed Lot 2 - 4.59 acres +/-
Proposed Lot 3 - 8.65 acres +/-
Proposed Lot 4 - 4.95 acres +/-
Proposed Lot 5 - 11.64 acres +/-
Proposed Lot 6 - 11.41 acres +/-
Proposed Lot 7 - 4.76 acres +/-
Proposed Lot 8 - 4.70 acres +/-
Proposed Lot 9 - 58.18 acres +/-

(NOTE: The above acreage was corrected to reflect the lot sizes on the approved master plan sheet.)

Patti read the acreages of the proposed lots from AP 18 Lot 25 from the agenda listing. It was noted that the lot lines of various parcels had changed, per previous request(s) of planning board members – therefore the individual lot acreage on the agenda did not quite correlate with the most current master plan. Patti read the Planning Board Hearing Procedures.

Julia asked where we stand now. This is a continuation of the public informational hearing.

*Master Plan
Public Informational Meeting cont'd
Discussion / Decision*

Attorney Spear explained that the continuation of this hearing was to get the Solicitor's opinion on the following:

- 1) The need, if any, for the applicant to have a waiver of the requirement of two means of ingress and egress; and
- 2) Whether the board could impose a condition upon the applicant which would prohibit further subdivision of the land at sometime in the future.

The Town Solicitor, Attorney John Bevilacqua reads from the prior transcript the issue that Board Member Tom Mercier wanted addressed regarding the issues of two means of ingress and egress for the proposed subdivision. Attorney Bevilacqua read the applicable section of the Foster Subdivision Regulations to the Board Members, more particularly page 28, number section 7, Road Layouts and Arrangements. Attorney Bevilacqua states that you cannot read number section 7 in a "microscopic situation" – he then read number section 9 which deals with dead-end roads, cul-de-sacs; and states that "dead-end roads shall not be more than 1200 feet in length." His final opinion – "It is not necessary that the board consider a waiver because you're considering the entire plan." Further in the meeting Attorney Bevilacqua again stated: "Our subdivision regulations allow for dead-end, cul-de-sac roads. So is there a necessity for a separate waiver? No."

There was some discussion regarding the allowed length of a cul-de-sac, or dead end road. Board members questioned whether that road length was somehow tied into the length of the fire hoses upon the fire trucks. The Solicitor did not know the reasoning behind the 1200 foot length; however, he felt that the members who approved the subdivision regulations, when written, thought and decided (1200') as the maximum length that they would consider as being a safe length in order to provide for adequate and safe circulation of vehicle traffic.

The discussion then continued to the "cart path" or "little trail" going from the Costa garage towards the one lot in Gloucester. The Solicitor states that the path or trail could not be used as access to the one lot in Gloucester because "...it doesn't come out on a town road. What it comes out on is someone's driveway. We'd have to accept that as a private road, and we're prohibited under our subdivision regs from doing so. And we could not even give a waiver for that." The Solicitor was referring to Provision 8 that section of the subdivision regulations that states "Private roads shall not be permitted."

The discussion then centered on the second request for a legal opinion from the planning board; whether it could impose a condition upon the applicant prohibiting further subdivision of the (remaining) land in the future. The Solicitor did state that this particular subdivision would stop the landowner from requesting a residential compound in the future on the remaining lands. As far as a standard subdivision, the remaining real estate has natural restrictions, such as large amount of wetlands and limited frontage on a road. The Solicitor stated the Board could ask for that restriction; however, the owners of the property would have to agree to that restriction.

As the two legal opinions were given by the Solicitor, the board members then returned to some final thoughts and issues regarding the subdivision.

Julia's chief concern is that it is a very expensive undertaking or proposition to build the road for this subdivision. Due to the expense of the road and the expense of developing some of the lots she is concerned that the subdivision may not work financially. She is concerned that part of the road will be built and then the funds will run out, and therefore the community will be left with an unfinished road or development, etc. posing a safety hazard.

At this time, the discussion turns to the issues of performance bonds, and that the road will have to be built in its entirety before the individual lots are constructed. The Solicitor refers to the subdivision regulations where it refers to improvement guarantees. The Solicitor states that the board has the legal authority to set certain conditions and the guarantees to make sure the road is finished and a guarantee is in place for 110% of construction costs. Tom Mercier refers the board members to pages 36 and 37 of the subdivision regulations. There was discussion of these safe guards and the Planning Board's comfort with the approval.

John Bevilacqua asked if this is a phased development. Tom said that this is one phase. Attorney Spear states that his clients will develop the project in one phase; and as a point of order that bonding or performance guarantees are usually something that is imposed later on the application process, not at the master plan stage.

Board member Helen Hardy requests that she be allowed to speak to the whole project. She recites her various concerns regarding the proposed development.

- 1) The grade of the road - being almost 8% which she considers to be "extreme and pushing it right to the limits of our subdivision regulations";
- 2) The length of the road – "which has been in question, was twice the allowable limit of what the regulations actually require in terms of that";
- 3) The building envelopes – if the building envelopes were drawn in such a way that were sensible and workable, as opposed to being drawn in a way to totally maximize the profit for the developer;
- 4) The lots themselves – some of the lots have okay access, others have access driveways that are steep, and / or wet and / or difficult;
- 5) The lot frontage – she notes that one lot has its total frontage on the radius of the turnaround and back to the road again;
- 6) The road itself – it is not all one grade and the same grade as the land around it – she mentions the fall away on either side of the road- refers to mandated guardrails.

This is her list of concerns, and based upon all of her concerns she feels that she could not, in good conscience, approve the subdivision. In her opinion it does not meet the spirit of good planning – she refers to the pushing, pushing, and pushing of the town's regulations.

Julia stated that she could agree with some, if not most of Helen's opinions; and she again questioned whether it would be feasible for the applicant to even try to develop the subdivision. Tom Mercier then spoke up, and stated that he did not think the board could consider what the developer could or could not sell the houses, or house lots for.

Tom then went on to explain the fifty (50') foot right-of-way or road and how it was required to be constructed to accommodate emergency vehicles, etc. The Solicitor stated that the applicants would have to meet our subdivision regulations for a 50 foot public road. The applicant's engineer Brian Thalmann then explained the requirements and how these plans meet those requirements in detail.

Board member Mike Carpenter then stated that a lot of information was covered during the last few meetings, and some of the issues will depend upon the plans that are submitted for the actual development / construction process. He then moves along to review the information given so far that will help the board in making its final decision at a future date. The review of his concerns was as follows:

1) Traffic Information – that the traffic information will be expanded upon, to give us a better impact on the Gene Allen Road / Stone Dam Road, Route 101 and Snake Hill Road; to get a more realistic traffic projection;

Attorney Spear had some concerns as to how Mr. Carpenter voiced his issues with the traffic study. However, further information can be gathered and Mr. Carpenter requested that it be done.

2) Road Grade – The town is aware of its limit of a 10% road grade. Mike went on to say not only should we consider the road grade, but also the fact that a new road is being constructed. That road is going to be paved and the town has an obligation to provide safe passage in inclement weather, for children and adults.

3) Speed Control – Will speed control be an issue on a half-mile stretch, which appears to be pretty straight stretch of a 50 foot (wide) road, going onto an 18-foot dirt road? Should we be looking at reducing grade levels of the road? As a review - guardrails come into play, grade comes into play, sight distance comes into play, and of course speed limits come into play.

The Solicitor, Atty. Bevilacqua states that the actual pieces (engineering) that go into the makeup of this road and what would constitute the bed of the road and the degrees of pitch and how it's swaled, all will be coming at a later time in the process. The applicants bear the responsibility to ensure that the road is constructed in accordance with subdivision regulations that have been agreed upon.

Mike Carpenter – States he also addressed the road issue because the proposed plan introduces about four acres of impervious ground and 2400 feet of road (in both Foster and Gloucester). He talks further about the target percentage for impervious ground in this area is approximately 3%, and feels this could become a real issue with this development. Therefore, this particular issue needs to be addressed, in terms of storm water runoff, septic systems, and quality of the water.

Marcia Bowden – what concerns her is the same issues keep coming up at all of the meetings. Normally in pre-application the applicants work with the Planning Board to create a development that meets our regulation requirements, and the board's concerns. She does not see any of this happening here.

John Neale – although the concerns are real, there is compliance with the strict requirements of the regulations.

Marcia Bowden – we must also follow the comprehensive plan and intent.

Julia Parmentier – there has not been a real discussion regarding what's in the best interest of the town but presented as a fait accompli and feel we're backed into a corner where we don't have the legal right to say – to stop it. And yet, we don't feel like its good planning.

Tom Mercier points out that we have to make a decision on the step that we're in, not on some future step or application. To get some of the answers to the questions that the board is asking is requiring additional information, and the additional information is required to be supplied at a later date or step in the process. Until we get to that point, we have to make a decision on whether the plan meets the criteria for the stage we are at now.

The Solicitor reminds the board that we have certain regulations that we have to abide by. And there's no prohibition for an individual to develop its land. The Solicitor understands the concerns of the board; however, he reminds the board members that their concerns at this stage should be – does this at least meet the minimum requirements necessary in our regulations to go forward?

The Chair then opens the comment period to members of the general public.

Richard Blodgett, Manager of Environmental Resources from the Providence Water Supply Board offers input to Planning Board on the impact of water quality; salt, septic systems, entering ground water. RI DEM and the federal government are well aware of this and have developed storm water prevention/pollution plan which 36/39 towns accept (not Foster). EPA will require them everywhere by the end of the year. This gives a well-detailed list that must be followed in construction and in plans.

Richard requests that the Planning Board request the developer to supply a SWPPP even though Foster does not require it, it's a concern with a project of this scale. Patti asks if he has a copy and Mr. Blodgett provided each member along with Mr. Spear with copies of info on this.

Patti asked who monitors this. Rich answered with either the Town Building Official or hire a professional engineer certified in Water and pollution control. The water supply board cannot go on private property without owner's permission.

Patti asked John B is we can require this. John B says that we can put this as a condition and town does this through the building official's office. The applicant bears the burden.

Patti asked if Attorney Spear had any further comments. He has none.

Tom asked what the procedure is now. Ann-Marie explained that we need to go through the work sheet.

Tom Mercier says that we are asked to approve but we do not have the current plans. The plans that the board has are not revised. Attorney Spear then submits revised plans signed by Mr. Thalmann.

Tom asked to take a 5 minute break. Meeting recessed at 8:40 p.m.
Patti reconvened the meeting at 8:54 p.m.

Attorney Spear noted that 8 of 9 sheets submitted were not familiar to the board and were withdrawn. Sheet 3 of 9 is the sheet with which the board is familiar. The other sheets have changed and will be submitted for review at a later date. Lot line changes were made to Lots 3, 4 and 5 to "make better planning sense". Julia says that implies that changes have already been made. The board will only be approving sheet 3 of 9 submitted on 3-2-10.

MOTION TO APPROVE:

Tom Mercier moved to approve the application of Blue Dog Investments, LLC and the landowners David and Lisa Costa to subdivide the real estate located at 196 Stone Dam Road, Foster, RI 02825 also known as tax assessor's plat 18 lot 25 in Foster, plat 12 lot 119 Glocester, Rhode Island in 9 separate and distinct parcels, Lot 1 entirely in the Town of Glocester contains 27.84 acres+/-; Lot 2 which contains 4.59 acres+/-; Lot 3 which contains 8.65 acres +/-; Lot 4 which contains 4.95 acres+/-; Lot 5 which contains 11.64 acres+/-; Lot 6 which contains 11.41 acres+/-; Lot 7 which contains 4.76 acres+/-; Lot 8 which contains 4.70 acres+/-; and Lot 9 which contains 58.18 acres+/- as shown on those plans entitled "Overall Layout Plan, Major Subdivision Plan, 196 Stone Dam Road, Prepared for David & Lisa Costa, 196 Stone Dam Road, Foster/Glocester, Rhode Island dated April 2007 and revised 01/18/08; 04/18/08; 05/05/08; 07/07/08, 09/09/09, and 03/02/10 Prepared by Resource Controls, Site/Civil Engineers, Land Planners, 474 Broadway Pawtucket, RI 02860, by Brian P. Thalmann, Registered Professional Engineer" sheet 3 of 9 as submitted to the planning board dated 03/02/10.

SAID MOTION IS BASED ON THE FOLLOWING FINDINGS OF FACTS:

A) Consistency with the general purposes of subdivision and land development review as stated under Section 45-23-3- of the Rhode island General Laws and:

- 1) Providing for the orderly, thorough and expeditious review and approval of land developments and subdivisions. The Board responded – yes.
- 2) Promoting high quality and appropriate design and construction of land developments and subdivision regulations. With the additional conditions of approval as listed below – members voting yes, John Neale, Tom Mercier, Mike Carpenter, Julia Parmentier, Pattie Moreau – members voting no, Helen Hardy, Marcia Bowden.
- 3) Promoting the protection of the existing natural and built environment and the mitigation of all significant negative impacts of any proposed development on the existing environment. The Board responded yes – with the proposed additional conditions regarding traffic and storm water run-off, with additional conditions as stated in conditions of approval below.
- 4) Promoting the design of land developments and subdivisions which are well integrated with the surrounding neighborhoods with regard to natural and built features, and which concentrate development in areas which can best support intensive use by reason of natural characteristics and existing infrastructure. The Board responded yes – with the condition of the approval of the road in accordance with the strictest standards for road engineering in Foster / Glocester as agreed by the two Public Works Departments.
- 5) Encouraging local design and improvement standards to reflect the intent of the community comprehensive plans with regard to the physical character of the various neighborhoods and districts of the municipality. The Board responded yes.
- 6) Promoting through technical review of all proposed land developments and subdivisions by appropriate local officials. The Board responded yes.
- 7) Encouraging local requirements for dedications of public land, impact mitigations, and payment-in-lieu thereof, to be based on clear documentation of needs and to be fairly applied and administered. The Board responded yes.
- 8) Encouraging the establishment and consistent applications of procedures for local record keeping on all matters of land development and subdivision review, approval and construction. The board, through the planning department, has kept appropriate records on this application, and this decision in accordance to Rhode Island General Law, Foster Land Development and Subdivision Regulations and the Foster Zoning Ordinance.

B) Required Findings under Section 45-23-60 of the General Laws of Rhode Island:

- 1) The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies. The Board responded yes, for this particular stage.
- 2) The proposed development is in compliance with the standards and provisions of the municipality's zoning ordinance. The Board responded yes, for this particular stage.
- 3) There will be no significant negative environmental impact from the proposed development as shown on the master plan, with all required conditions for approval. The Board responded yes.
- 4) The subdivisions, as proposed, will not result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable. The Board responded yes.
- 5) All proposed land developments and all subdivision lots have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered compliance with this requirement. The Board responded yes.

WAIVERS: No waivers were required.

ADDITIONAL CONDITIONS OF APPROVAL:

- 1) A fee in lieu of land dedication (\$1,335.00 x 8 = \$10,680.00)
- 2) Storm water pollution prevention plan development requirements – a plan will be required.
- 3) The road construction will meet the most stringent road conditions of the Town of Foster and Glocester.
- 4) The expense of the storm water pollution prevention plan shall be borne by the applicant.
- 5) Limits of disturbance shall be shown on the preliminary plan.

The above motion was seconded by John Neale.

Members voting to approve: John Neale, Tom Mercier, Mike Carpenter, Julia Parmentier, Pattie Moreau

Members voting to deny: Helen Hardy, Marcia Bowden.

The Motion was approved: 5 to 2.

(PLEASE NOTE: The applicant did have a stenographer at the public informational meeting on March 10, 2010, and if anyone has any questions regarding the above, you are referred to the transcript of the meeting a copy of which can be found in the Planning Department with the applicant's file.)

L. New Business

M. Old Business

N. Future Agenda Items

March 17, 2010 – Regular Application Meeting

March 20, 2010 – Rte 6 Rezoning Workshop

April 7, 2010 – Review Revise Planning Board By-Laws, Applications, etc.

O. Adjournment

Tom Mercier moved to adjourn at 9:39 p.m. Motion carried unanimously.

Respectfully submitted,

Helen Hardy, Secretary